



Dan Skopec
Acting Secretary

California Environmental Protection Agency

Air Resources Board • Department of Pesticide Regulation • Department of Toxic Substances Control
Integrated Waste Management Board • Office of Environmental Health Hazard Assessment
State Water Resources Control Board • Regional Water Quality Control Boards



Arnold Schwarzenegger
Governor

Certified Mail: 70000600002711549147

April 18, 2006

Mr. Mel Knight, Director
Sacramento County Environmental Management Division
8475 Jackson Road, Suite 240
Sacramento, California 95842

Dear Mr. Mel Knight:

The California Environmental Protection Agency (Cal/EPA), Office of Emergency Services, and the Department of Toxic Substances Control conducted a program evaluation of Sacramento County Environmental Management Division Certified Unified Program Agency (CUPA) on September 28-29, 2005. The evaluation consisted of a review of program elements, an in-office program review and field inspections. Following the evaluation, the state evaluators completed an Evaluation Summary of Findings, which was reviewed with your agency's program management.

The evaluation summary of findings includes identified deficiencies, corrective action to be taken and timeframes for correction of identified deficiencies. Two additional evaluation documents completed during the evaluation are the Program Observations and Recommendations and the Examples of Outstanding Program Implementation.

I have reviewed the enclosed copy of the Summary of Findings and I find that Sacramento County Environmental Management Division's program performance is satisfactory with some improvement needed. To update our files on your progress toward correcting the identified deficiencies, please provide a status report, using the attached format, within 30 days from receipt of this letter.

Cal/EPA also noted during this evaluation that the Sacramento County Environmental Management Division Certified CUPA has worked to bring about program innovation, such as a unique "Enforcement Revenue Credit Program" where rebates are provided to compliant businesses from non-obligated or excess enforcement revenue. Additionally, as an example of outstanding program implementation, the Sacramento County Environmental Management Division's inspection and enforcement program is both comprehensive and effective, whereas, it has produced in excess of 200 Administrative Enforcement Actions since 2002. We will be sharing the outstanding program implementation examples and program innovations with the larger CUPA community through the Cal/EPA Unified Program web site to help foster a sharing of such ideas statewide.

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Thank you for your continued commitment to the protection of public health and the environment through the implementation of your local Unified Program. If you have any questions or need further assistance, you may contact your evaluation team leader or Jim Bohon, Manager, Cal/EPA Unified Program at (916) 327-5097 or by email at jbohon@calepa.ca.gov.

Sincerely,

Don Johnson
Assistant Secretary
California Environmental Protection Agency

Enclosures

cc: See next page

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cc: Mr. Dennis Green, Program Manager
Sacramento County Environmental Management Division
8475 Jackson Road, Suite 240
Sacramento, California 95842

Mr. John Paine (Sent Via Email)
California Environmental Protection Agency
1001 I Street, 4th Floor
Sacramento, CA 95814

Ms. Loretta Sylve (Sent Via Email)
California Environmental Protection Agency
1001 I Street, 4th Floor
Sacramento, CA 95814

Mr. Mark Pear (Sent Via Email)
Department of Toxic Substance Control
700 Heinz Avenue, Suite 210
Berkeley, California 94710-2721

Mr. Fred Mehr (Sent Via Email)
Governor's Office of Emergency Services
P.O. Box 419047
Rancho Cordova, California 95741-9047

Ms. Liz Haven (Sent Via Email)
State Water Resources Control Board
P.O. Box 944212
Sacramento, California 94244-2102

Mr. Charles McLaughlin (Sent Via Email)
Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

Ms. Vickie Sacamoto (Sent Via Email)
Office of the State Fire Marshal
P.O. Box 944246
Sacramento, California 94244-2460

Mr. Moustafa Abou-Taleb (Sent Via Email)
Governor's Office of Emergency Services
P.O. Box 419047
Rancho Cordova, California 95741-9047



STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY



Alan C. Lloyd, Ph.D.
Agency Secretary

**CERTIFIED UNIFIED PROGRAM AGENCY EVALUATION
SUMMARY OF FINDINGS**

Arnold
Schwarzenegger
Governor

CUPA: Sacramento County Hazardous Materials Division

Evaluation Date: September 29th & 30th, 2005

EVALUATION TEAM

Cal/EPA: John Paine
Kareem Taylor (Training)
Jim Bohon (Observer)
DTSC: Tom Asoo
OES: Brian Abeel

This Summary of Findings includes the deficiencies identified during the evaluation, observations and recommendations for program improvement, and examples of outstanding program implementation activities. The evaluation findings are preliminary and subject to change upon review by state agency and CUPA management.

Questions or comments can be directed to John Paine at 916-327-5092.

	<u>Deficiencies</u>	<u>Preliminary Corrective Action</u>	<u>Timeframe</u>
1	The CUPA's data system is not correctly identifying repeat minor violations identified during re-inspections as Class II violations. The CUPA has a clear understand and implements the appropriate enforcement actions, elevating repeat minor violations to Class II violations	The CUPA will investigate and re-configure their data system to address collecting, tracking, and reporting repeat violations.	January 1, 2006
2	The CUPA is not inspecting all Cal ARP Program stationary sources within their jurisdiction at least every three years. The CUPA is only meeting 80% of their mandated frequency over the last	The CUPA will develop a mechanism or fine-tune the current one to ensure that all stationary	

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	three years – FY 02/03, 03/04, 04/05 but clearly upon review of the last four Summary Reports (01/02, 02/03, 03/04, 04/05) the CUPA has increased yearly the percentage of facilities inspected per year from 16% in FY 01/02 to 35% in FY 04/05.	sources within their jurisdiction are inspected at least every three years	April 2006
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CUPA Representative

(Print Name)

(Signature)

Evaluation Team Leader

(Print Name)

(Signature)

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PROGRAM OBSERVATIONS AND RECOMMENDATIONS

1. **Observation:** The CUPA is not always citing Hazardous Waste violations in a manner consistent with the definitions of Minor, Class II, or Class I as provided in statute and regulation. The inspection forms used to identify hazardous waste Class I violations are not consistent with the definitions found in statute and regulation. The CUPA has changed their procedures for identifying potential Class I violations. After inspections are completed, the inspectors review violations with their Supervisor before entering violations into the data base system. Due to the CUPA's pre-printed forms that generalize Class I violations, inaccurate Annual Enforcement Summary Report data was submitted to Cal/EPA.

Recommendation: Continue to document Class I violations as done in FY 04-05 and continue to accurately report Class I violations on the Annual Summary Report.

2. **Observation:** The CUPA and the County Agricultural Commissioner have a memorandum of understanding (agreement) for the Commissioner's staff to conduct hazardous material and hazardous waste inspections of pesticide handlers. The CUPA provides the Commissioner's staff with facility and other necessary information to conduct those inspections of agricultural handlers. Once conducted, the inspection documentation is brought to and left with the CUPA. The CUPA has the responsibility to conduct follow-up inspections and enforcement to ensure any facilities observed to be non-compliant with either program return to compliance. The CUPA trains the Commissioner's staff twice a year on conducting inspections, covering all aspects of the Business Plan and Hazardous Waste Generator Programs. Additionally, the Liaison and representatives from the Agricultural Commissioners office met quarter to maintain coordination through implementation discussion. The Liaison receives and reviews all the inspection reports for these businesses, ensuring that reports are complete. However, no other measures are taken to ensure adequate performance of the inspectors.

Recommendation: Cal/EPA recommends that the CUPA periodically conduct joint or oversight inspections with the inspectors from the Agricultural Commissioners Office. This will provide first-hand verification that the inspectors are conducting adequate inspections at these facilities and whether or not they are meeting the established performance expectations set forth for the Unified Program.

3. **Observation:** During the last several reporting years, the CUPA has expended numerous staff resources to address the UST program element requirements. During FY 04-05 they conducted nearly eight hundred inspections at the five hundred underground storage tank facilities in Sacramento County. Nearly three hundred of these inspections were related to installations, upgrades, repairs, and removals of tanks. Additionally, the staff completed almost four hundred construction plan, and permit application reviews during the same time period.

Recommendation: None provided.

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4. **Observation:** The CUPA has a streamlined Administrative Enforcement Order process that is working well for all program elements. The CUPA initiates formal enforcement actions on all observed Class I violations. However, the rational for settlement figures of 20 – 25% of the initial base penalty is not consistent with the intent of the regulations. The hazardous waste penalty regulations provide statewide consistency for penalty calculations. The penalty matrix has a penalty range for flexibility in determining penalties.

Recommendation: The CUPA should review their rational for settlement figures. Rather than a standard settlement figure of 20 – 25% of the base penalty, reviewing each settlement case individually based upon the factors that gave you the final penalty (i.e. extent of deviation, potential for harm, the violator's intent, economic benefit, ability to pay, compliance history, and adjustment for cooperation) should also be taken into consideration when developing a settlement figure.

5. **Observation:** It does not appear that tank integrity assessments are being reviewed during inspections. R Squared and Ultima Circuits were two facilities that were cited for failing to have tank integrity assessments by DTSC. Previous CUPA inspections did not observe this violation.

Recommendation: The CUPA should add the tank standard for integrity assessment to their checklist to help remind staff to check for proper tank integrity assessments.

6. **Observation:** The CUPA has digital cameras for inspection staff. However, during the HWG oversight inspection the CUPA inspector did not take photographs of the violations during their inspections. The CUPA has indicated that they typically take photographs for all potential Class I violations.

Recommendation: Photographs are useful to document violations and the conditions at the facility. Photographs can help strengthen your case should enforcement become necessary. Always remember to date stamp photographs.

7. **Observation:** The violations and corrective measures are identified in the Notice to Comply/Summary of Violations. However, there were times when additional details could have been provided.

Recommendation: The CUPA should be descriptive when detailing violations and corrective measures (e.g. the number, size, and location of containers/tanks in violation). Having a clear understanding of the violation and corrective measure not only helps the facility in returning to compliance, but also serves to strengthen your case should formal enforcement actions need to be taken.

8. **Observation:** The CUPA has developed a comprehensive inspection and enforcement plan that goes beyond the minimum requirements of Title 27, resulting in a very useful and user-friendly plan. Since its development in 2002, the plan has been reviewed and revisions made annually. They are proactively using the Administrative Enforcement

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Orders for all the CUPA programs. However, the enforcement process used for follow-up to violations identified by the Agricultural Commission Inspectors at facilities handling pesticides is unique but not clearly specified in the MOU and not addressed in the CUPA's Inspection and Enforcement Plan.

Recommendation: If the CUPA is planning to extend their MOU with the Agricultural Commissioners Office beyond its 2006 expiration, then document the follow-up enforcement process in the Inspection and Enforcement Plan.

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EXAMPLES OF OUTSTANDING PROGRAM IMPLEMENTATION

1. Since 2002, the CUPA has successfully managed their Unified Program implementation through various organizational adjustments and changes. Several organizational changes have been implemented to continuously improve their efficiency and effectiveness of their Unified Program. The CUPA's total number of personnel has increase over 73%, with all but two of the thirty CUPA positions filled. Field related staff has increased from 16 in 2002 to currently 21 Environmental Specialists assigned to perform inspections. The total number of positions added since 2002 has increased 40%. To improve span of control and management oversight, the CUPA organization was divided into three primary division and two additional supervisor positions were added, verses one division and one supervisor in 2002. Three clerical support positions, which previously were shared with other non-CUPA departments, are now fully dedicated to the Unified Program. Continuously, the CUPA ensures that all Sacramento County businesses who handle any hazardous material or waste are identified and determined where or not they are subject to regulation by the CUPA. Three full-time technical positions are dedicated countywide surveys annually. Examples of survey methods include, but are not limited to, reviews to this task as their primary duty, which includes performing of the telephone book review, checks of new business licenses, and drive-by surveys. In 2002, only two positions were assigned with this task.
2. The CUPA has employed various technology tools to improve the quality and efficiency of the services they deliver. The CUPA is presently working with Decade Software to pilot a new web-based data management system. The system will provide businesses with the option of electronic submission of forms and other required documentation. It will also include an interface process that will make all public information available to simplify and streamline access of information available for public review. The CUPA is also in the early stages of implementing a field-based inspection reporting system, using tablet PCs. The system will provide inspectors with access to facility specific data maintained on the CUPAs central database. Additionally, the system will significantly improve the quality, efficiency, and timeliness of the results of every inspection, allowing for one-time entry of data by the inspectors during the inspection. Over the past few years the CUPA has converted all documents and photos to electronic media, improving customer access to facility information and minimizing lost or hidden documents. Additionally, as a standard equipment all inspectors are issued cellular phones and digital cameras.
3. The CUPA's system for managing data is a very effective tool to ensure adequate and comprehensive maintenance and oversight of all Unified Program activities. The CUPA utilizes an enhanced violation tracking system to identify specific facilities compliance information. The system contains all required documents, forms, and other required information submitted by a business and other information related to the business' compliance activities. The system includes some of the following types of data: Unified Program Consolidated forms, formal and informal enforcement orders or actions taken, return to compliance certifications, permits, general correspondence, etc. Specific violations are identified and tracked using an internal code number. The code number with the specific violation can be found on a tracking form in the notice to comply for better clarification.

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4. The CUPA has established a very comprehensive and effective inspections and enforcement program. CUPA staff schedule their own facility inspections and receive quarterly printouts of the facilities in their assigned areas and track their inspections due by the last inspection date listed on these printouts. Printouts are provided in order of last inspection date – oldest date receiving highest priority. Supervisors hold quarterly meetings with staff to review outstanding facility violations and select candidates for re-inspections and potential enforcement activity. The completion of inspections at mandated frequency levels continues to be the top priority. During the past two evaluations the CUPA was cited for not meeting their inspection frequencies for the Business Plan program. Upon review of the Business Plan files and Summary Reports (01/02, 02/03, 03/04, 04/05), the CUPA is now meeting this frequency. As much as possible, the CUPA coordinates consolidated inspections (inspections of facilities under multiple programs) to minimize duplication of efforts. However, in FY 2003/2004, the CUPA terminated consolidated facility inspections, which occurred over the last six years, at mini-mart facilities that had consolidated CUPA inspection components with food facility inspections. Due to legislation, UST inspections have become more specialized and time-consuming. In addition, changes in the Food Protection Program in Sacramento County have led to increased inspection frequencies for food facilities. As a result, the CUPA determined that consolidated inspections of these facilities were no longer efficient and viable. The CUPA has put together comprehensive checklists for all Program Elements that extrapolates useful information during an inspection. Quantities of hazardous materials and waste, disposal records, and observations are fields identified in the HWG checklist.

Since the implementation of the Administrative Enforcement Order (AEO) process in 2002, the CUPA has issued and completed over two hundred and twenty 220 AEO actions, which includes cases involving all Unified Program elements taken against both private and public sector facilities. For the current fiscal year, through September 30, 2005, the CUPA has initiated fifty-nine AEO actions, of which all but ten cases have been settled. The violations associated with these cases include failure to submit or update business plans, failure to pay/operating without a permit, no monitoring certifications, failure to identify designated operator, failure to obtain permit, and multiple CalARP violations. In addition to the local actions, the CUPA has initiated actions and led efforts for a couple of cases that had major statewide implications, which include cases involving 7-Eleven and Jiffy Lube. The CUPA has also developed and implemented a “Failure to Return to Compliance” (FTC) notification process that is aimed at closing minor violations. Data system reports are generated quarterly and provided to CUPA management and inspection staff. Notification letters are automatically generated and distributed to all facilities with open violations. Those businesses that fail to respond to the FTC notice are targeted for a re-inspection and associated fee. The FTC notices have resulted in a 75% closure rate. The CUPA has also implemented a “Failure to Pay” (FTP) notification process too. This process is aimed at closing delinquent accounts. The notice is automatically generated and annual permits will not be issued for delinquent accounts, linking the annual permits to fee payments. Those businesses that fail to respond to the FTP notice are targeted for AEO for operating without a permit. The result of this FTP has resulted in the collection of one hundred and fifty thousand dollars collected in delinquent fees. It has also help to clean up the data system and leveled the competitive playing field. Since the implementation of the FTP notices, the delinquency rate has decreases from 6.7% to 2.7%. The CUPA continues to implement one of the most aggressive Business Plan compliance programs. The tracking frequency of Business Plans and renewal

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forms has been increased from bi-monthly to monthly. Delinquent facilities are informed by certified proof of service mail that they have been granted a 30-day extension period. Failure to appropriately respond to this extension results in the issuance of an administrative order.

5. To ensure continuous improvement and maintenance of the Unified Program, the CUPA has employed several management policies and routine administrative activities. The CUPA annually performs a comprehensive and thorough examination of their policies, procedures, and local ordinances, promptly making all necessary amendments. Annually, the CUPA reviews and refines their inspection checklists, guidance materials, inspection protocols, and tools available for enforcement of noncompliance. In addition, the CUPA management team pays serious attention and emphasis on their development, approach, and utilization of the annual self-audit process. The resulting Self-Audit reports are complete and comprehensive. The reports contain specific and concise information that clearly depicts their actual performance activities and actions taken during the prior fiscal year. Furthermore, the CUPA uses the results of the self-audit to identify areas for program improvement and identifies and implements very specific program goals and objectives for the next fiscal year.
6. The CUPA's multiple outreach and compliance assistance activities and related efforts are excellent and comprehensive, covering all aspects of the Unified Program. Examples of such activities and actions include: holding free workshops whenever any program changes are considered, providing any avenue for public input and input from regulated businesses. Two workshops are held each month to assist regulated business's compliance. Notices for these and all other workshops are distributed to all regulated businesses for each workshop. Fee and service delivery workshops are also provided. Publishing multiple Compliance Assistance Bulletins (CAB). Examples of CABs issued by the CUPA include: "Deadline for Installation of Under-dispenser Containment," "The Five Year Update Requirement for Risk Management Plans (RMPs) Pursuant to the California Accidental Release (Cal ARP) Program." The CUPA's website provides full access to the multiple types of information, including forms, permit applications, general procedures, inspection and enforcement policies and procedures, CABs, fee schedules, site remediation, guidance materials for program compliance, etc. Televised Environmental Commission meetings where CUPA personnel are often presenting presentations on Unified Program related materials. Major policy issues or planned program changes are also presented to the Commission for input on final resolutions or recommendations. The CUPA has entered into a MOU agreement with Sacramento County Business Environmental Resource Center (BERC) for an Environmental Compliance School. With guidance and direction from the CUPA, BERC will develop and administer a training course for owners/operators of businesses identified by the CUPA as "in violation" of one or more Unified Program element requirements. The course will offered through FY 2006 and will be limited to 10 participants. Within 10 days of each course, BERC will submit a summary report, which will include list of participants and documentation of test scores.
7. In 2005, the CUPA developed and implemented a unique and innovative annual credit program, "The Enforcement Revenue Credit Program." The program provides for annual rebates of non-obligated or excess monies that are collected through enforcement actions to regulated businesses that have achieved acceptable compliance for three years. The rebates are program element specific and will vary from year to year, depending on the projected revenues from each

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applicable program element. The premise behind the program is that the rebating or crediting of non-essential fine and penalty revenues rewards compliance and serves as an incentive for “best” business practices. Over one hundred and sixty thousand dollars will be returned in FY 05-06. A department policy and procedure was developed and effective on July 1, 2005.

8. Consolidation, consistency and coordination are the guiding principles as the CUPA achieves their program objective of compliance through inspections, enforcement actions, education, and outreach activities. The CUPA is a regular participant at the Environmental Task Force meetings, leading and coordinating two major statewide enforcement actions during the past few years. The CUPA Program Manager is a member of the CUPA Forum Board and CUPA personnel are standing members involved in numerous statewide Unified Program committees, workgroups, and Technical Advisor Groups. Locally, the CUPA participates at the County Green Business/P2 committee and a member of the planning committee for the annual Continuing Challenge Conference held here in Sacramento. The CUPA has also served as a technical resource to State Legislative Committees, providing technical information in support of recent hazardous materials legislation concerning drug labs. CUPA personnel are also frequent speakers at community meetings; environmental conferences and other venues were the present information about their Unified Program and the innovative implementation approaches they have developed.
9. Effective July 1, 2005, the CUPA implemented a new tiered fee structure for all CalARP facilities. The proposal was developed with industry involvement and endorsed by the Sacramento Environmental Commission. Adopted on April 19, 2005 by the Sacramento County Board of Supervisors, the five-year fee package provides for full program cost recovery. At the close of FY 2004/2005, the Cal ARP Program consisted of 46 facilities with submitted or requested RMPs. Several facilities have multiple and nearly identical stationary sources; the CUPA allowed these facilities to compile these sources into one RMP. During the FY 2004/05 period, the CUPA completed its second administrative enforcement case within the Cal ARP program for failure to implement CalARP requirements. An AEO was issued and settled with an assessed penalty of \$5,985.
10. The CUPA has two significant changes to the Business Plan Program: (1) the CUPA completed the electronic imaging of all the CUPA documents including Business Plans, renewal forms and inspection records; (2) the tracking frequency of Business Plans or renewal forms has been increased from bi-monthly to monthly. The CUPA continues to utilize a two-part Hazardous Materials Business Plan Program review process. Submitted Business Plans and renewals forms undergo a completeness review. Incomplete documents are returned to facilities with a 30-day deadline and a violation code is entered into the CUPA’s Envision database for tracking purposes. Completed Business Plans and renewals are electronically scanned for staff and general public access, and for transmittal to area fire departments. Staff performs technical reviews as part of on-site inspections and note any required changes.
11. During the past two evaluations, the CUPA’s Area Plan was overdue for being reviewed and amended in accordance with Chapter 6.95 of the Health and Safety Code. During this evaluation, the Area Plan dated October 2003 was reviewed and found to contain all the required elements

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within Title 19. The organizational format of the plan, the content and depth of the required provisions is exceptional.

- 12.** The CUPA electronically scans Business Plans and renewals information, including chemical inventory data, and transfers this information onto DVD and provides the DVD to a centralized fire department communications center every 15 days for use by emergency responders. The CUPA continues its role as an on-call emergency response and technical resource to local first responders and can access and transmit additional Business Plan information if requested.